

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

MICHAEL KEVIN HARRIS,

Petitioner,

v.

**CIVIL ACTION NO. 2:08-CV-79
CRIMINAL ACTION NO. 2:05-CR-19-3**

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John K. Kaull. By Standing Order, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on November 5, 2009 [Civ. Doc. 3 / Crim. Doc. 328]. In that filing, the magistrate judge recommended that this Court deny the petitioner's § 2255 motion and to dismiss the case with prejudice.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

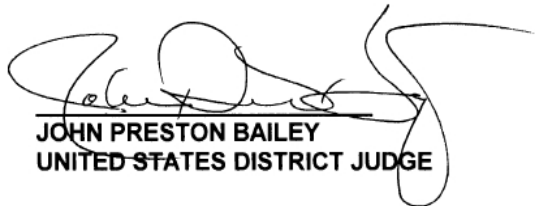
review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due within ten (10) days of its receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on November 11, 2009. See Crim. Doc. 329. Neither party filed objections. Therefore, the report and recommendations will be reviewed for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation [Civ. Doc. 3 / Crim. Doc. 328]** should be, and is, hereby **ORDERED ADOPTED**. Accordingly, this Court **DENIES** the petitioner's § 2255 motion **[Civ. Doc. 1 / Crim. Doc 306]** and **DISMISSES** it **with prejudice**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: March 17, 2010.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE